

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

HOWARD L. TOMS,

Plaintiff,

Case No. 3:18-cv-169

vs.

COMMISSIONER OF SOCIAL SECURITY,

District Judge Walter H. Rice

Magistrate Judge Michael J. Newman

Defendant.

REPORT AND RECOMMENDATION¹

This is a Social Security disability appeal filed by *pro se* Plaintiff. The Commissioner appeared in the case by filing the Administrative Record on August 3, 2018. *Pro se* Plaintiff was required to file his Statement of Errors within 48 days after service of the Administrative Record. *See* S.D. Ohio Civ. R. 8.1(b) (requiring that the Statement of Errors be filed within 45 days after service of the administrative record); *see also* Fed. R. Civ. P. 6(d) (permitting an additional 3 days to act when served by regular mail).

When *pro se* Plaintiff failed to file his Statement of Errors within the required time, the Court, acting *sua sponte*, issued a Show Cause Order directing him to show cause or to otherwise file the Statement of Errors within 14 days, *i.e.*, on or before October 9, 2018. *See* doc. 10. Plaintiff was also notified that his failure to comply with the terms of the Show Cause Order could result in the dismissal of his Social Security disability appeal for failure to prosecute. *See id.* Despite the foregoing, Plaintiff failed to show cause or otherwise file his Statement of Errors as ordered

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

and the time for doing so has expired. Therefore, the undersigned **RECOMMENDS** that this case be **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

IT IS SO ORDERED.

Date: October 11, 2018

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report and Recommendation is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F), and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As is made clear above, this period is likewise extended to **SEVENTEEN** days if service of the objections is made pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).¹